SWBT suggests the best guide for policymakers is the development of an industry-wide consensus on the management of interference.[155]

Award

The Arbitrators find that an industry consensus does not exist as to whether there is a technically sound basis to implement a BGM program for xDSL services. Although the industry has apparently been collectively addressing spectrum management issues through the ANSI T1E1 working group, no solution appears to have been found. SWBT's arguments regarding industry agreement on BGM are not persuasive, particularly in light of Petitioners' testimony and the clear lack of consensus among Parties in this proceeding on the acceptability of SWBT's proposed SFS program. However, the Arbitrators do agree with SWBT's suggestion that the best guide for policymakers is the development of an industry-wide consensus on the management of interference, and urge Parties to work toward that objective. The Arbitrators note that the § 271 DSL Working Group was created to develop spectrum management standards in Texas where no current industry standards exist.

The Arbitrators therefore order that SWBT stop using its proposed spectrum management process, SFS. The Arbitrators find that to impose SWBT's current spectrum management standards on all xDSL providers would impose a unilateral standard on Petitioners, and would not be consistent with the *Advanced Services Order*.[156] The SFS process further has the effect of discriminating against deployment of xDSL services other than ADSL, especially in relation to the availability of clean copper loops for use by xDSL providers. The Arbitrators order SWBT to remove any restrictions imposed by SWBT on use of pairs for non-ADSL xDSL services, either through designations in the LFACS and LEAD databases or by the rules in LFACS limiting deployment of non-ADSL xDSL services to certain pair ranges.

The Arbitrators note that the *Advanced Services Order* establishes certain spectrum management rules relevant to the review of this specific issue. In that Order, the FCC first finds

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[155] *Id.* at 14.

[156] *Advanced Services Order* at ¶ 63.

that uniform spectrum management procedures are essential to the success of advanced services deployment. Further, the FCC concludes that the incumbent LEC must provide competitive LECs with nondiscriminatory access to the incumbent LEC's spectrum management procedures and policies. The procedures and policies that the incumbent LEC uses in determining which services can be deployed must be equally available to competitive LECs intending to provide service in an area.[157] The FCC also recognizes that there may be a limit to the number of lines delivering advanced services that can share a binder group without interfering with other customers' services.[158] The FCC recognizes that early attention to binder group management issues will guard against problems arising as advanced services reach higher penetration, and seeks further comment on managing binder groups as a part of the Notice of Proposed Rulemaking associated with the *Advanced Service Order*.[159] In order to prevent delay in the deployment of new technologies, the FCC encourages the industry to apply a "test and see" strategy, which would allow competitive LECs and incumbent LECs to cooperate in testing and deployment of new services.

The Arbitrators find that SWBT shall not reserve loop complements for ADSL services exclusively. SWBT witness Deere states, "[i]f a cable is large enough to allow controlling loop assignments without restricting the availability of xDSL loops to a CLEC, there is no harm or discrimination."[160] The Arbitrators find that the reservation of cable complements for the specific technology being utilized by SWBT's retail operations would give SWBT an unfair competitive advantage. Further, such a practice does not create availability of xDSL capable loops on a nondiscriminatory basis. While the FCC is currently seeking comment on whether to allow ILECs to segregate xDSL technologies,[161] the Arbitrators find that the particular segregation practices used by SWBT and the manner in which they have been deployed, do not manage the spectrum in a competitively neutral or efficient manner. The Arbitrators therefore

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[157] *Id.* at ¶ 72.

[158] *Id.* at 76.

[159] *Id.* at n. 185.

[160] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William Deere at 17, (May 28, 1999).

[161] *Advanced Services Order* at ¶ 86.

order SWBT to release binder groups that have already been marked as "ADSL only." The Arbitrators find that SWBT cannot segregate xDSL technologies into designated binder groups without Commission review and approval. Where SWBT has already implemented BGM or reserved loop complements, SWBT must open those binder groups to all xDSL services and all xDSL providers. The Arbitrators find that this is technically sound and feasible and will not cause network harm. It should also lower competitors' costs to the extent more clean copper loops are available that do not require conditioning. Further, making the segregated pairs available for use for all xDSL services will encourage the deployment of advanced services in Texas.

13. Should SWBT be required to provide disclosure of the causes for loop non-availability associated with a BGM program?

Parties' Positions

Rhythms witness Kennedy asserts that there should not be any denial of loops based on BGM.[162] He indicates that the only reasons why Rhythms would be getting a rejection are that the service is not available because of the presence of a DLC, or there is no facility available whatsoever, not because of spectrum management.[163]

Covad argues that the *Advanced Services Order* does not allow SWBT to deny provisioning a loop unless it first justifies that denial before this Commission.[164]

SWBT states that it recognizes the need to comply with the *Advanced Services Order* with respect to denial of CLEC orders. SWBT intends to provide information to the CLEC upon denial of an order, including the specific reason for rejection, the number and type of technologies deployed on that cable, and whatever other information would be relevant. SWBT

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[162] Tr. at 1733 (June 5, 1999).

[163] *Id.*

[164] DPL at 34 (May 28, 1999).

witness Mr. Samson indicates that the reasons for denial may include a scenario in which the customer is served by fiber or DLC, or it could be that there is physically no pair available.[165]

Award

In DPL Issue No. 12, the Arbitrators determined that SWBT's proposed spectrum management process should not be used at this time. As a result, there should be no denials based on spectrum management issues. However, in the event that an order is denied for some other reason, the Arbitrators conclude that SWBT shall be required to provide full disclosure, consistent with the *Advanced Services Order*[166] and T2A Attachment 25, Section 4.2.[167] In the event SWBT rejects a request by Petitioner for provisioning of advanced services, including, but not limited to denial due to fiber, DLC, or DAML facility issues, SWBT is required to disclose to the requesting Petitioner the specific reason for the rejection within 48 hours of the request. The reason for rejection shall be filed under Public Utility Commission Project No. 21696. In no event shall the denial be based on loop length. *See* DPL Issue No. 1.

14.   In the event a technically reasonable BGM process can be developed, can SWBT unilaterally impose its own interference tables or should a neutral third party be empowered to do so?

Parties' Positions

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[165] Tr. at 1730-1731 (June 5, 1999).

[166] *Advanced Services Order* at ¶ 73:
  We conclude that incumbent LECs must disclose to requesting carriers information with respect to the rejection of the requesting carrier's provision of advanced services, together with the specific reason for the rejection. The incumbent LEC must also disclose to requesting carriers information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops. We believe that such disclosure will allow for a more open and accessible environment, foster competition, and encourage deployment of advanced services.

[167] T2A Attachment 25, Section 4.2:
  SWBT shall not deny a CLEC's request to deploy any loop technology that is presumed acceptable for deployment, or one that is addressed in Section 4.3 of this Attachment, unless it has demonstrated to the Commission that the CLEC's deployment of the specific loop technology will significantly degrade the performance of other advanced services or traditional voice band

Rhythms argues that SWBT's self-generated spectrum BGM plan, which includes its own defined interference tables, has not been reviewed by a regulatory body or agreed to by any national standards forums such as ANSI, or by affected CLECs. Rhythms argues that there is no justification for allowing SWBT to implement a plan that no one has reviewed, commented upon, or approved. According to Rhythms, to the extent SWBT's proposed interference tables place limitations on Rhythms' ability to provide multiple xDSL services, Rhythms will be significantly and detrimentally limited in its provision of services in Texas.[168] Rhythms points out that the "interference tables have so many flaws that they are useless as the basis for *any* spectrum management program of the type and scope contemplated by SWBT," and argues that the tables have been based on a single manufacturer and on a specific technology.[169]

Covad argues that SWBT's BGM plan relies on several assumptions regarding the interference from loops in the same and adjacent binders that do not apply to actual loop plant conditions. According to Covad, the tables focus only on ADSL services and rely on analogous tables showing how other xDSL services are affected by the presence of T1, HDSL, IDSL, ADSL, or other xDSL services. Covad points out that the interference tables are theoretical information and necessarily assume the existence of outside plant data regarding the relative position of loops.[170]

SWBT claims that the interference tables can predict the interference due to xDSL technology.[171] SWBT asserts that, while awaiting the completion of a national standard, it is important that spectrum management using interference tables be performed. SWBT states that it is important that performance prediction be based on what can be achieved by actual equipment and that the interference tables were generated by measuring the performance of actual equipment. Further work is ongoing to make performance prediction more robust and to

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services. For the purpose of this section, "significantly degrade" means to noticeably impair a service from a user's perspective.

[168] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 31 (Feb. 19, 1999).

[169] ACI Exhibit 21, Supplemental Direct Testimony of Rand Kennedy at 5 (May 24, 1999).

[170] Covad Exhibit 42, Supplemental Direct Testimony of Anjali Joshi at 4 (May 24, 1999).

[171] SWBT Exhibit 29, Supplemental Rebuttal Testimony of Mark Russell at 4 (May 28, 1999).

take into account the various aspects of the loop plant. According to SWBT, the models used in generating the interference tables are applicable for predicting performance in actual deployment.[172] SWBT indicates that an update could be generated, if deemed appropriate.[173]

Award

The Arbitrators find that a unilateral imposition of SWBT's interference tables upon Petitioners is inappropriate and may result in discrimination against competitors in the highly competitive sphere of advanced services. SWBT cannot, as required under the *Advanced Services Order,* "unilaterally set spectrum compatibility and spectrum management policies." [174] The FCC was clear in the *Advanced Services Order* that ILECs shall not impose unilateral spectrum management conditions on CLECs. [175] The Arbitrators adhere to the FCC's reasoning that, rather than unilateral ILEC-determined standards and practices on spectrum management policies, there should be a competitively neutral spectrum setting process, and note that Attachment 25 of the T2A creates a one-year § 271 Working Group to set competitively neutral standards.[176]

The Arbitrators conclude that SWBT's interference tables are not suitable for predicting performance for any type of xDSL other than possibly ADSL. Moreover, it is questionable

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[172] *Id.* at 7.

[173] *Id.* at 9.

[174] *Advanced Services Order* at ¶ 79.

[175] *Id.*

[176] T2A, Attachment 25, Sec. 8.4:
In the event that a loop technology without national industry standards for spectrum management is deployed, SWBT, CLECs and the Commission shall jointly establish long-term competitively neutral spectral compatibility standards and spectrum management rules and practices so that all carriers know the rules for loop technology deployment. The standards, rules and practices shall be developed to maximize the deployment of new technologies within binder groups while minimizing interference, and shall be forward-looking and able to evolve over time to encourage innovation and deployment of advanced services. These standards are to be used until such time as national industry standards exist. CLECs that offer xDSL-based service consistent with mutually agreed-upon standards developed by the industry in conjunction with the Commission, or by the Commission in the absence of industry agreement, may order local loops based on agreed-to performance characteristics. SWBT will assign the local loop consistent with the agreed-to spectrum management standards.

whether the interference tables are even suitable for ADSL deployment.[177] Covad and Rhythms stated that they plan to implement many types of xDSL through the resulting Interconnection Agreements. However, SWBT's interference table is insufficient to properly manage the variety of xDSL Petitioners plan to deploy. The interference tables may serve as an impediment to deployment of non-ADSL technologies, and may be insufficient for ADSL applications. For all of these reasons stated, the Arbitrators conclude that SWBT shall not unilaterally impose its interference tables on Petitioners.

The Arbitrators also conclude that the *Advanced Services Order* directed carriers to use competitively neutral standards with regard to spectrum management. Thus, to the extent the Parties use spectrum management in the deployment of xDSL technologies, such management policies, procedures, and guidelines shall be developed collaboratively between Parties, consistent with this Award and the procedure established by this Commission for the § 271 DSL Working Group. Further, Parties shall adhere to national or industry-wide accepted standards for spectrum management of xDSL technology as those standards are adopted.

14(a). Should the Interconnection Agreement adopt all the requirements of the March 31, 1999 First Order in CC Docket No 98-147 regarding spectrum compatibility and management?

Parties' Positions

Rhythms contends that as long as its technology is consistent with the FCC's compatibility rules, the technology can be connected to the PSTN with reasonable confidence that the technology will not significantly degrade the performance of other advanced services, and will not impair traditional voice grade services.[178] Rhythms witness Mr. Geis highlights the FCC's stated concern that allowing ILECs to have unilateral authority over spectrum management would stifle deployment of competitive and innovative services.[179] Rhythms argues

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[177] ACI Exhibit 21, Supplemental Direct Testimony of Rand Kennedy at 5 - 6 (May 24, 1999); ACI Exhibit 22, Supplemental Direct Testimony of Philip Kyees at 3 - 9 (May 24, 1999).

[178] Post-Hearing Brief of ACI at 49-50; *Advanced Services Order* at ¶ 66.

[179] ACI Exhibit 6, Rebuttal Testimony of Eric H. Geis at 11 (April 8, 1999).

that SWBT's proposals for spectrum compatibility and management "have had precisely this chilling effect in Texas."[180]

Covad states that the *Advanced Services Order* specifically defines the obligations of SWBT and the CLECs with respect to spectrum compatibility and management. Covad proposes to adopt into the resulting Interconnection Agreements the language of the *Advanced Services Order* not already included in the Agreements.[181]

SWBT indicates that it will follow the guidelines as set forth in the *Advanced Services Order*.[182]

Award

The Arbitrators find that the spectrum compatibility and management requirements of the *Advanced Services Order* are the appropriate standards to be adopted in this Award. The *Advanced Services Order* became effective before the date of this Award, and its requirements are thus incorporated herein and should be incorporated into the resulting Interconnection Agreements.[183]

14(b). Should SWBT be required to keep CLEC deployment information confidential from any people involved in SWBT's or any affiliate's retail DSL offerings?

Parties' Positions

Rhythms witness Mr. Geis expresses concern with respect to SWBT's request that CLECs submit lists of central offices, in priority order, where the CLEC is planning to provide

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[180] *Id.* at 11 - 12.

[181] DPL at 35 (May 28, 1999).

[182] DPL at 34 (May 28, 1999); *Advanced Services Order* at ¶¶ 72 – 73.

[183] The *Advanced Services Order* was issued on March 31, 1999, after the request for arbitration was filed. The Order became effective on June 1, 1999, after the hearing on the merits commenced. However, the hearing on the merits did not conclude until June 10, 1999, after the Order became effective.

service, in order to establish their loop qualification process. Mr. Geis indicates that the priority list of central offices is highly proprietary, and should not be given to competitors.[184]

Covad asserts, and SWBT does not dispute, that SWBT's wholesale team has already provided competitively sensitive CLEC xDSL deployment information to SWBT's retail team.[185] Covad argues strongly that SWBT should not disclose sensitive information regarding the specific type of service Covad is supplying to specific customers, the amount of any particular type of services Covad is providing, or Covad's central office deployment schedule to Covad's competitors, including SWBT's own retail operations.

SWBT agrees that the confidential information it obtains from CLECs regarding xDSL deployment should not be disclosed to SWBT employees involved in retail xDSL marketing, or to employees of any SWBT affiliate that offers retail xDSL service.[186] SWBT indicates that some of its employees, primarily operations personnel, are necessarily involved in xDSL deployment at both the wholesale and retail level, but that those personnel do not market xDSL. SWBT indicates that its procedures to prevent the unauthorized transfer of competitive information to marketers are sufficient for xDSL deployment, just as they are for provision of other UNEs.[187]

Award

The Arbitrators conclude that SWBT is required to keep CLEC deployment information confidential from SWBT's retail operations, any SWBT affiliate, or any other CLEC. The disclosure of such highly sensitive information would be an anti-competitive, discriminatory and prejudicial action by SWBT against its competitors in violation of the FTA and PURA and threatens the further development of a competitive advanced services market in Texas. The

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[184] ACI Exhibit 6, Rebuttal Testimony of Eric H. Geis at 20 (April 8, 1999); *See* DPL Issue No. 16.

[185] Covad Ex. 34 is an e-mail from Paula Perry of SWBT to Rusty Goodson, a member of SWBT's *Retail Core Team*. Attached to the e-mail is a table that lists, among other things, the central offices in various cities in Texas in which Covad, Rhythms, and other CLECs are already collocated or in which they seek xDSL deployment.

[186] SWBT Post-Hearing Brief at 38 (Aug. 17, 1999).

[187] *Id.* at n. 125.

Arbitrators find CLEC deployment information to be proprietary in nature, and thus find the disclosure of CLEC deployment information by SWBT to its retail operation to be grave. Therefore, the Arbitrators additionally order SWBT to take all measures to ensure that CLEC deployment information is neither intentionally nor inadvertently revealed in the future to any part of SWBT's retail operations, any affiliate, or any other CLEC without prior authorization from the affected CLEC.

IV.   Provisioning

DPL Issue Nos. 15-22

15.   Is SWBT required to provide real time access to OSS for loop makeup information qualification, preordering, provisioning, repair/maintenance and billing?

Parties' Positions

Rhythms maintains that it must have access to electronic, automated systems that allow rapid and efficient access to pre-ordering information about the technical make-up of a potential customer's loop, and to on-line ordering and maintenance systems.[188] Rhythms asserts that SWBT must provide real time access to all OSS functionalities at parity to what SWBT provides to itself on the retail side.[189] Rhythms argues that it must be in parity with the data access available to SWBT's retail operations, and not experience any artificial handicaps or delays imposed by SWBT.[190] Rhythms witness Ms. Gentry provides the example of an electronic ordering system in use in California whereby customers have been able to obtain loop make-up information, place the order, and receive a price quote and due date for an xDSL service in less

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[188] ACI Exhibit 2, Direct Testimony of Jo Gentry at 6 (Feb. 19, 1999).

[189] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 33-36 (Feb. 19, 1999); ACI Exhibit 2, Direct Testimony of Jo Gentry at 7-9 (Feb. 19, 1999); ACI Exhibit 20, Supplemental Direct Testimony of Jo Gentry at 6–7, 10-23 (May 24, 1999) (Confidential); ACI Exhibit 19, Supplemental Direct Testimony of Eric Geis at 14-19 (May 24, 1999) (Confidential); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 19-21, 23-24 (April 8, 1999); ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 4-6 (April 8, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 3 (April 8, 1999).

[190] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 35 (Feb. 19, 1999).

than 14 minutes, start to finish. Ms. Gentry points out that a manual system may cause this process to take days.[191] Rhythms asserts that an electronic ordering system should support an automatic flow-through process that enables a CLEC employee to place orders on-line.[192] If SWBT does not have real-time access available, Rhythms recommends that it should be required to develop such a system within six months.[193]

Rhythms also states that it appears that SWBT's LFACS and LEAD databases have all of the loop makeup information Rhythms needs for pre-ordering DSL-capable loops.[194]

Rhythms witness Ms. Gentry asserts "that the systems and processes SWBT intends to employ are specifically tailored for, and will strongly favor, SWBT's own chosen type of ADSL, thereby affirmatively restricting or precluding the provision of other types of DSL-based services by ACI and other CLECs."[195] Ms. Gentry cites the lack of parity between the manner in which loop qualification requests are transmitted (by mail or fax) by CLECs, compared to the e-mail access available to SWBT's retail operations.[196] Ms. Gentry also makes reference to SWBT's planned Loop Qual system for obtaining loop make-up information, noting that the enhanced CPSOS system will be available to SWBT's retail operations, including mechanized order flow-through. However, CLECs must take extra steps to process orders, even after being given access to pre-ordering functions through Verigate/ Datagate.[197]

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[191] ACI Exhibit 2, Direct Testimony of Jo Gentry at 8 (Feb. 19, 1999).

[192] ACI Exhibit 2, Direct Testimony of Jo Gentry at 15 (Feb. 19, 1999).

[193] *Id.*

[194] ACI Post-Hearing Brief (Confidential Version) at 69, citing ACI Ex. 149a, Phillips Tr. 160; McDonald Tr. 8, 9:20-22, 14; ACI Ex. 34; ACI Ex. 39.

[195] ACI Exhibit 20, Supplemental Direct Testimony of Jo Gentry at 3-4 (May 24, 1999).

[196] *Id.* at 16.

[197] *Id.* at 16-17.

Covad argues SWBT's LFACS database contains all or most of the information necessary to determine whether a loop is capable of transmitting xDSL signals.[198] To achieve true non-discriminatory access, Covad continues, CLECs must have read-only access to the same information.[199] Covad observes that, according to the deposition of SWBT employee Ms. Bird, several departments in SWBT already have read-only access to LFACS for various purposes.[200] Even if a CLEC has access to the loop makeup information, Covad asserts that SWBT still must provide a mechanized loop ordering interface to achieve flow-through parity with its own retail service offerings.

SWBT describes its process that includes pre-qualification, ordering, and loop qualification for ADSL loops.[201] SWBT witness Auinbaugh indicated that SWBT is developing a mechanized pre-qualification process to indicate whether a loop serving a particular location is capable of supporting ADSL technology.[202] The mechanized pre-qualification process generally categorizes the loops into those with a length of less than 12,000 feet, those that are between 12,000 feet and 17,500 feet, and those that are in excess of 17,500 feet, or have non-copper facilities on the loop. In subsequent testimony and cross-examination, SWBT witnesses Auinbaugh, Deere, and Phillips maintain that the pre-qualification process is entirely an option to the CLEC, as is any conditioning that may be desired.[203] Mr. Auinbaugh then describes the CLEC's loop ordering process, which includes a manual loop qualification procedure. During this procedure, the engineering group provides the loop make-up, which includes details

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[198] Covad Exhibit 43A, Supplemental Direct Testimony of Sandee Turner at 7-8 (May 24, 1999) (Confidential); ACI Exhibit 149A, Bird Deposition at 14–16; 27–29; 63–65 (May 6, 1999); ACI Exhibit 149A, D. McDonald Deposition at 33–36 (May 12, 1999).

[199] Covad Exhibit 45, Supplemental Rebuttal Testimony of Dhruv Khanna at 4-5 (May 28, 1999).

[200] Covad Exhibit 43A, Supplemental Direct Testimony of Sandee Turner at 8 (May 24, 1999) (Confidential).

[201] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbaugh at 7-14 (Feb. 19, 1999); SWBT Exhibit 2, Direct Testimony of William C. Deere at 14 (Feb. 19, 1999).

[202] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 8 (Feb. 19, 1999).

[203] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 20 (Feb. 19, 1999); SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 15 (April 8, 1999); SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 8 (May 28, 1999); SWBT Exhibit 28, Supplemental Rebuttal Testimony of George R. Phillips, Jr. at 2-3 (May 28, 1999).

regarding loop length, bridged taps, load coils, repeaters, and a verification of loop and spectrum feasibility.[204]

SWBT witness Mr. Deere reiterates that SWBT does not currently have an electronic database that contains all of the loop make-up information being sought by Petitioners.[205] During cross-examination, he indicated that the two items that are usually missing from the LFACS database are indicators of actual loop length and the presence of bridged tap.[206] Mr. Deere believes that the complete loop makeup in electronic form exists for less than 21% of SWBT's central offices.[207] He further emphasizes that SWBT does not use a loop make-up database for the provision of retail ADSL services.[208] SWBT contends that the LFACS database is not the type of robust system that is capable of providing real-time access to either CLECs or SWBT's retail ADSL operations.[209]

SWBT witness Mr. Phillips indicates that since April 1, 1999, SWBT has made its SORD ordering system available for CLEC use, providing the ability to submit electronic orders for xDSL loops.[210] Mr. Phillips also describes a new database, "Loop Qual," that is being developed to provide electronic access to loop make-up information to customers on the retail side as well as the wholesale side.[211] This system contains at least five fields of information: basic qualification (red/yellow/green), wire center, taper code, loop makeup, and 26 gauge equivalent

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[204] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 10-11 (Feb. 19, 1999). The Arbitrators note that Mr. Auinbauh also testified regarding flow-through requirements for orders as follows:

> Q. (Phillips) Okay. Do you think that SWBT is required to give to ACI and Covad the same level and degree of flow-through for their UNE loop orders that is present for your retail ADSL orders?
> A. (Auinbauh) Actually, no. Tr. at 1859 (June 5, 1999).

[205] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 3 (May 28, 1999).

[206] Tr. at 1825 (June 5, 1999).

[207] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 5 (May 28, 1999).

[208] Id. at 3.

[209] Tr. at 1974 (June 5, 1999).

[210] SWBT Exhibit 28, Supplemental Rebuttal Testimony of George R. Phillips, Jr. at 6 (May 28, 1999).

[211] Tr. at 1864-1865 (June 5, 1999).

length. Mr. Deere states that this information is mostly theoretical point design data.[212] This database should be accessible by CLECs through the Verigate system, and it is scheduled to be on line by December 1999.[213]

Award

The Arbitrators find that SWBT must provide Petitioners with nondiscriminatory access, whether that access is available by electronic or manual means, to its OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing for DSL-capable loops. This includes "the manual, computerized, and automated systems, together' with associated business processes and the up-to-date data maintained in those systems."[214] Petitioners must be given nondiscriminatory access to the same OSS functions that SWBT is providing any other CLEC and/or SWBT or its advanced services affiliate. This includes any operations support systems utilized by SWBT's service representatives and/or SWBT's internal engineers and/or by SWBT's advanced services affiliate to provision its own retail xDSL service.[215]

The Arbitrators' decision is consistent with the FCC's recent findings in the *UNE Remand Order*. While not modifying the definition of OSS, the FCC clarified that "the pre-ordering function includes access to loop qualification information." Loop qualification information identifies the physical attributes of the loop plant (such as loop length, the presence of analog load coils and bridge taps, and the presence and type of Digital Loop Carrier) that enable carriers to determine whether the loop is capable of supporting xDSL and other advanced technologies. This information is needed by carriers seeking to provide advanced services over those loops through the use of packet switches and DSLAMs."[216] The FCC also elaborated on the ILEC's obligation to provide requesting carriers the same underlying information the ILEC

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[212] Tr. at 1979 (June 5, 1999).

[213] Tr. at 1872-1875 (June 5, 1999) (SWBT is currently "masking" four of the data fields from use and view); 1949 (June 5, 1999).

[214] *UNE Remand Order* at ¶ 425.

[215] *Id.* at ¶¶ 427-430.

[216] *Id.* at ¶ 426.

has in any of its own databases or other internal records, and gives examples of the types of information to be provided.[217] The Arbitrators adopt the FCC's findings on the requirements associated with access to loop makeup information found in the *UNE Remand Order*.

SWBT has provided sworn testimony that it does not use a loop make-up database for the provision of retail ADSL services.[218] It is clear from evidence in this case, however, that some SWBT employees involved with retail ADSL have access to databases containing useful loop makeup information that are not available to CLECs. As an example, evidence reveals that at least one member of SWBT's ADSL Retail Core Team, the Manager of the Loop Assignment Center, Methods and Procedures, also has responsibilities with respect to the LFACS database.[219] Further, SWBT's outside plant engineers and loop assignment center personnel have access to the LFACS and LEAD databases that contain valuable loop makeup information sought by CLECs.[220] The Arbitrators are troubled by the inconsistencies regarding the relationship between SWBT's retail and wholesale operations, and find that the issue of nondiscriminatory access must be further addressed. SWBT should not be allowed to assign employees to both wholesale and retail responsibilities, nor should SWBT employees be allowed access to information that in any way may advantage its retail advanced services operations over those of its competitors. Remedies to address the Arbitrators' concerns will be included in the discussion of DPL Issue No. 16.

The Arbitrators also note that SWBT has stated that in addition to the number of central offices for which inventories had been requested by CLECs, an additional 271 central offices are

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[217] *UNE Remand Order* at ¶¶ 427-431; 47 C.F.R. §§ 51.319(g) and 51.5. *See also* SBC/Ameritech Merger Order at ¶¶ 371-374 and SBC/Ameritech Merger Order Appendix C at ¶ 20.

[218] SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 3 (May 28, 1999).

[219] ACI Exhibit 149A, Deposition of Victoria Bird at 48-49, 130-134 (May 6, 1999).

[220] ACI Exhibit 149A, Bird Deposition at 36, 45-46, 60-62, 112-114, 177-183 (May 6, 1999); *Id.*, Goodson/Wren Deposition at 238-246 (May 6, 1999).

expected to be inventoried for SWBT's own purposes before the end of 1999.[221] All of this inventory information should be made available for use in providing loop makeup information.

In addition, in order to encourage deployment of advanced services throughout Texas, and because the LFACS and LEAD databases currently contain valuable loop makeup information accessible to SWBT personnel,[222] and because SWBT is already currently working to provide electronic processes for preordering and ordering of advanced services,[223] the Arbitrators find that SWBT must provide real time, electronic access to all systems needed for efficient provisioning of advanced services such as xDSL. SWBT's pre-qualification and loop qualification systems as currently described are *not* a reasonable substitute for pre-order access to actual loop makeup information. SWBT's current systems involve the application of SWBT's ADSL design parameters to the qualification of loops to be used for technologies that may far exceed SWBT's service offerings, and focus on theoretical loop makeup rather than actual loop makeup.[224]

The Arbitrators order SWBT to develop and deploy enhancements to its existing Datagate and EDI interfaces that will allow CLECs, as well as SWBT's retail operations or its advanced service subsidiary, to have real-time electronic access as a preordering function to the loop makeup information described in DPL Issue No. 17. SWBT shall develop and deploy these enhancements as soon as possible, but not to exceed six months from the Award in this Arbitration.[225] The interim manual process for access to loop makeup information is addressed in DPL Issue Nos. 15(a) and 19(b) below.

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[221] Tr. at 1947 (June 5, 1999).

[222] In fact, SWBT witness Mr. Deere testified that SWBT network personnel currently access and use the information in the LFACS and LEAD databases to provide loop qualification information. Tr. at 1818-1819. *See also UNE Remand Order* at ¶ 430.

[223] *See, e.g.*, Tr. at 1864-1865 (June 5, 1999); Tr. at 1872-1875 (June 5, 1999); 1949 (June 5, 1999); SBC/Ameritech Merger Order at ¶¶ 371-374 and SBC/Ameritech Merger Order Appendix C at ¶¶ 15-20.

[224] *See UNE Remand Order* at ¶ 428.

[225] *See* SBC/Ameritech Merger Order at ¶ 374 and SBC/Ameritech Merger Order Appendix C at ¶ 20.

SWBT shall also develop and deploy enhancements to its existing Datagate and EDI interfaces to allow for ordering xDSL and other advanced services as soon as possible, but not to exceed six months from the Award in this Arbitration. Such enhancements shall ensure that orders for DSL-capable loops flow through at parity with comparable UNE orders, and SWBT's retail or advanced services affiliate's DSL orders. Also, as discussed and defined in Section II of this Award, Petitioners are ordering "DSL-capable" loops. The only varieties of DSL-capable loops are 2-wire xDSL loops and 4-wire xDSL loops. Therefore, any ordering process should not require Petitioners to specify a type of xDSL to be ordered. However, for each loop, Petitioners should at the time of ordering notify SWBT as to the type of PSD mask they intend to use, and if and when a change in PSD mask is made, Petitioners should notify SWBT. Likewise, SWBT should disclose to Petitioners "information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops."[226] The ordering process should also encompass any conditioning requested by Petitioners, *e.g.*, at the time of ordering, Petitioners should be able to instruct SWBT as to what conditioning is requested. The Arbitrators do not believe that any additional modifications to the current electronic ordering processes for UNE loops should be necessary, beyond those required to address the PSD mask and conditioning issues.

The Arbitrators also find that SWBT shall provide "trouble reports" to Petitioners for "any function or capability of the accessed loop element" and SWBT shall "not limit such reports to voice-transmission trouble only."[227] The FCC stated in ¶ 195 of the *UNE Remand Order*:

> Thus, we conclude that, in so far as it is technically feasible, the incumbent must test and report trouble on conditioned lines, if requested by the competitor, for all of the line's features, functions, and capabilities, and may not restrict its testing to voice-transmission only.

15(a). What is the appropriate interval for SWBT's xDSL-capable loop qualification process?

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[226] *Advanced Services Order* at ¶ 73.

[227] *UNE Remand Order* at ¶ 195.

Parties' Positions

Rhythms contends that SWBT should qualify a loop for a CLEC within four hours of receiving the order for the xDSL loop.[228] According to Rhythms witness Mr. Geis, new customers of the CLEC may be required to wait over 14 days for xDSL service on an unbundled loop under SWBT's proposal, and that interval may grow to 28 days or more in areas where neither SWBT nor CLECs are currently offering the service.[229] According to Rhythms witness Mr. Kersh, Pacific Bell responds to the CLEC request with loop qualification information (using the "12k/17k/18k" pre-qualification method) within one to 72 hours of receipt of the request.[230]

Covad argues that SWBT should offer a standard interval for loop qualification of four hours, as does its affiliate Pacific Bell.[231] Covad witness Mr. Haas expresses concern that SWBT's proposed loop qualification intervals do not allow competitors the opportunity to provide xDSL services in the same amount of time as SWBT's retail organization.[232]

SWBT indicates that it is committed to provisioning for xDSL loops under the same terms and conditions as SWBT provides on its tariffed ADSL product.[233] SWBT's proposed contract language describes the loop qualification interval as follows:

> Until a mechanized system is in place for loop qualification, requests for loop qualification shall be submitted to SWBT on a manual basis. A standard loop qualification interval of 3-5 days is available for requests in markets where the process is currently in place. In other markets, a maximum standard loop qualification interval of 15 days is available until loop qualification methods, procedures, and training are established for the central office. In an effort to establish the Loop Qualification Process by central office in the priority order desired by CLEC, CLEC will provide SWBT with a prioritized list of central office locations where CLEC has appropriate associated equipment, has or has

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[228] ACI Proposed Contract Language, Revised Decision Point List Matrix, Section 4.X.4. (May 28, 1999).

[229] ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 19 (April 8, 1999).

[230] ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 5 (April 8, 1999).

[231] Revised DPL Matrix at 36 (May 28, 1999).

[232] Covad Exhibit 1, Direct Testimony of Charles A. Haas at 12-14 (Feb. 19, 1999).

[233] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 15 (Feb. 19, 1999); SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 17, and at Schedule 2 (April 8, 1999).

ordered shielded cable, and intends to order access to ADSL Loops within 60 days of receipt of the list of central offices. SWBT will establish Loop Qualification Process methods, procedures, and training, for CLEC's 3 highest central office priorities and will meet with CLEC to establish a schedule for the remaining identified locations, if any. In any event, CLEC shall be entitled to the loop qualification interval of 3-5 days associated with any SWBT central office(s), which SWBT has completely inventoried for another CLEC or for SWBT's own purposes. After the initial loop qualification and installation on behalf of any CLEC in a given central office, a standard loop qualification interval of 3-5 days will be established.

During cross-examination, SWBT witness Mr. Auinbaugh agreed that in the worst case, the maximum allowable qualification and conditioning interval could reach 30 working days, or six weeks.[234] Mr. Samson indicated that in addition to the number of central offices for which inventories had been requested by CLECs, an additional 271 central offices are expected to be inventoried for SWBT's own purposes before the end of 1999, thus reducing the qualification interval.[235]

Award

The process of providing loop information to CLECs is clearly a critical step in the provision of xDSL services. The long-term goal for this interval should be measured in minutes or seconds, rather than days. SWBT's current process includes two types of loop qualification: (1) pre-qualification, which consists of the red/yellow/green zone designation based on algorithms tailored for SWBT's ADSL product; and (2) and a process containing five or more elements, including theoretical loop length. As discussed in DPL Issue Nos. 15 and 17, the Arbitrators believe SWBT must provide actual, real-time loop makeup information to CLECs rather than a pre-qualification or loop qualification process because SWBT's back office personnel have the ability to access relevant actual loop makeup information in real time through the back office databases.

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[234] Tr. at 1846 (June 5, 1999).

[235] *Id.* at 1947.

The FCC agreed with this approach in the *UNE Remand Order*, concluding that:

> access to loop qualification information must be provided to competitors within the same time intervals it is provided to the incumbent LEC's retail operations. To the extent such information is not normally provided to the incumbent LEC's retail personnel, but can be obtained by contacting incumbent back office personnel, *it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.* It would be unreasonable, for instance, if the requesting carrier had to wait several days to receive such information from the incumbent, if the incumbent's personnel have the ability to obtain such information in several hours. In order to provide local exchange and exchange access service, a competitor needs such information quickly to be able to determine whether a particular loop will support xDSL service.[236] (emphasis added.)

Until such a real-time system is implemented, however, the Arbitrators find that SWBT's pre-qualification system should provide a response to Petitioners' queries within four hours for those central offices that have been inventoried. If a CLEC chooses to employ SWBT's manual pre-qualification system in a central office that has not been inventoried, the interval for receiving the response should be no longer than 10 business days. If a CLEC elects to have SWBT provide actual loop makeup information through a manual process, then the interval should be established as 3 business days. If SWBT can provide its retail ADSL personnel with actual loop makeup information in a shorter time frame, then the interval for a CLEC should be parity with that timeframe. At the time an electronically interfaced loop makeup system is implemented, the objective interval for obtaining loop make-up information should become a part of the body of OSS performance measures.

16. Upon request from Rhythms, is SWBT required to provide loop length and makeup data regarding specific central offices within a reasonable period of time from all central offices?

Parties' Positions

Rhythms contends that SWBT should provide loop make-up information to CLECs, but is concerned that SWBT is requiring up to 60 days to implement the loop qualification process in

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[236] *UNE Remand Order* at ¶ 431.

each specific central office.[237] In addition, Rhythms disagrees with SWBT's request that CLECs submit a list of central offices, in priority order, where this process would be provided. Rhythms believes that such information is highly proprietary and should not be given to competitors.[238] Rhythms argues that Petitioners have already submitted over 100 collocation applications in Texas, and the loop inventory should be completed within the same time as the collocation request is completed.[239] According to Rhythms witness Mr. Kersh, SWBT's claim that it will take two months to perform an inventory for three offices is unreasonable, considering that it took Pacific Bell approximately three months to inventory 80 to 90 offices designated by CLECs in California.[240]

> Rhythms' proposed contract language contains the following recommendation:
>
> 4.X.4. SWBT shall also provide to Rhythms the loop length and makeup of all loops served from Central Offices designated by Rhythms, within 60 days of submission of a request for each Central Office.

Covad does not provide evidence on this specific DPL issue. Covad reiterates its desire to receive computerized access to databases that contain loop make-up, repair, maintenance or billing information.[241]

Evidence submitted by SWBT does not address the issue of providing loop length and make-up of *all* loops in each central office designated by the CLEC. SWBT indicates that it has no obligation to supply detailed information about every loop in a central office. SWBT witness Mr. Deere asserts that loop makeup information is not contained in any single source, and that it would be very difficult and extremely expensive to compile for all central offices.[242] However,

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[237] ACI Exhibit 2, Direct Testimony of Jo Gentry at 13-14 (Feb. 19, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 20–21 (April 8, 1999); ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 4–5 (April 8, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 2–3, 5-6 (April 8, 1999).

[238] ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 20 (April 8, 1999).

[239] *Id.* at 21.

[240] ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 5 (April 8, 1999).

[241] DPL at 43 (May 28, 1999).

[242] SWBT Exhibit 2, Direct Testimony of William C. Deere at 14-17 (Feb. 19, 1999), SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 11-12 (April 8, 1999).

SWBT witness Mr. Samson, testifies that SWBT expects to inventory 271 central offices for its own purposes prior to the end of 1999.[243]

SWBT presents evidence describing its loop pre-qualification plan that is being implemented in central offices in Texas, beginning with Austin, Dallas, and Houston.[244] For those central offices that have been inventoried for the purpose of loop pre-qualification, SWBT indicates that it will provide the results to CLECs in 3–5 business days. In areas that have not been inventoried, only the maximum loop qualification interval of 15 business days is available. Regarding the potential delay in conducting inventories, SWBT witness Mr. Auinbaugh testified that the 60 day interval for the office inventory could be running during the time in which the CLEC's collocation request is being provisioned.

Award

The Arbitrators view this issue as containing three major elements. The first is whether SWBT should be required to provide loop length and makeup information for individual loops as requested. The Arbitrators responded to this issue in the affirmative in DPL Issue No. 15.

The second element is whether CLECs will be required to furnish a prioritized list of areas in which they will serve, and the time interval within which SWBT is expected to inventory the central office. The Arbitrators find that CLECs should not be required to provide SWBT with a prioritized listing of central offices in which they plan to provide service. The CLECs already provide notification to SWBT when they order allocation, and SWBT should use that process as the signal to perform necessary inventories. The Arbitrators view further disclosure as unnecessary and contrary to the need for competitive confidentiality. Evidence in this proceeding shows that SWBT has already shared with its Retail ADSL Core Team members a listing of central offices in which CLECs have collocated or those in which CLECs are seeking

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[243] Tr. at 1947 (June 5, 1999).

[244] SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 9 (April 8, 1999); Tr. at 1945-1948 (June 5, 1999).

deployment.[245] The Arbitrators believe such disclosure of competitive information to SWBT retail ADSL employees is inappropriate, disadvantages competitors and must stop immediately.

The third component of this issue is whether or not SWBT should be required to provide loop makeup information for all existing or vacant loops within *all* its central offices. The Arbitrators find that in those central offices in which SWBT has completed its inventory, either in response to a CLEC request or for its own retail deployment, or for its separate advanced services subsidiary deployment, SWBT must provide the requested loop makeup information for all loops in the central office within three business days. For those central offices that have not yet been inventoried, the Arbitrators agree that "blanket" requests for immediate loop makeup details should not be supported at this time, but that such central offices should be inventoried according to a schedule based on collocation requests. SWBT has agreed to inventory the central offices within 60 calendar days of a request from a CLEC, and the Arbitrators find that such an interval is reasonable, so long as it is allowed to run concurrently with the collocation request in that central office.

In the *UNE Remand Order*, the FCC found that an incumbent LECs should not be required to "catalogue, inventory, and make available to competitors loop qualification information through automated OSS even when it has no such information available to itself." In those instances where an incumbent LEC has not compiled such information for itself, the FCC does not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers. The FCC did find, however, that an incumbent LEC that has manual access to this sort of information for itself, or any affiliate, must also provide access to it to a requesting competitor on a non-discriminatory basis. The FCC further stated that it expects that ILECs will be updating their electronic databases for their own xDSL deployment and, to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface.[246]

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[245] *See* Covad Exhibit 34; Covad Post-Hearing Brief at 59 - 61 (Aug. 17, 1999).

[246] *UNE Remand Order* at ¶ 429.

However, this issue heightens the Arbitrators' concerns regarding the equality of information transfer between SWBT's retail and wholesale operations. Evidence shows that SWBT's ADSL Retail Core Team personnel have had access to network assignment databases that could easily allow SWBT's retail operations to gain significant advantage over their competitors.[247] The Arbitrators need further assurance that competitively beneficial information is not being passed from SWBT's network provisioning operations to its retail service operations. An arms-length separation, e.g., a separate advanced service subsidiary as proposed in the SBC-Ameritech merger conditions,[248] would be one solution to the Arbitrators' concerns. Until such separation is accomplished, however, the Arbitrators instruct SWBT to prepare a plan for approval by the Commission within 45 calendar days of this Award, whereby "firewalls" are constructed between SWBT's retail and wholesale organizations, the purpose of which is to restrict the flow of competitively beneficial information.

17.   What data should be included in the makeup data?

Parties' Positions

Rhythms contends that it must be provided with information about the physical makeup of the xDSL loop; including loop length, wire gauge, presence and number of repeaters, load coils and bridged tap and existence of DLC systems or DAMLs.[249] Because different xDSL technologies are best suited for different loop conditions, Rhythms needs the loop makeup information in order to adapt the type of xDSL service to the available loop.[250]

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[247] ACI Exhibit 149A, Deposition of Victoria Bird at 48-49, 130-134 (May 6, 1999); ACI Exhibit 19, Supplemental Direct Testimony of Eric H. Geis at 14-15 (May 24, 1999).

[248] *In re Applications of Ameritech Corp., Transferor, And SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion And Order (rel. Oct. 8, 1999) (*SBC-Ameritech Merger Order*).

[249] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 34 (Feb. 19, 1999); ACI Exhibit 2, Direct Testimony of Jo Gentry at 7–8 (Feb. 19, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 6–7 (April 8, 1999); ACI Exhibit 20, Supplemental Direct Testimony of Jo Gentry at 6–9 (confidential) (May 24, 1999).

[250] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 35 (Feb. 19, 1999).

Covad maintains that loop makeup information, at a minimum, should include the loop length, existence and length of bridged taps, existence of load coils, average wire gauge, presence and type of DLC, and ISDN readiness.[251] Covad argues that SWBT's databases have all this information.[252]

SWBT witness Mr. Phillips indicates that SWBT will soon implement a pre-qualification system, accessible through VERIGATE, that will provide the loop length stated as 26 gauge equivalent, the wire center, an indication if the pair is loaded or non-loaded, the taper code, and the red/green/yellow qualification indicator.[253] In addition, SWBT witness Mr. Auinbaugh indicates that SWBT will soon implement modifications to its LEX/EDI ordering gateway that will provide the loop length stated as 26 gauge equivalent or as actual gauge makeup, the absence or presence of load coils, the presence of bridged tap, repeaters, and or DLC.[254]

Award

The Arbitrators find that the loop makeup data should include the following: (a) the actual loop length; (b) the length by gauge; and (c) the presence of repeaters, load coils, or bridged taps; and shall include, if noted on the individual loop record, (d) the approximate location, type, and number of bridged taps, load coils, and repeaters; (e) the presence, location, type, and number of pair-gain devices, DLC, and/or DAML, and (f) the presence of disturbers in the same and/or adjacent binder groups. The Arbitrators find that SWBT should provide to the CLEC any other relevant information listed on the individual loop record but not listed above.

The Arbitrators' position is consistent with the decision of the FCC in the recent *UNE Remand Order*. With respect to this issue, the FCC found that:

"an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that

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[251] Covad Exhibit 43, Supplemental Direct Testimony of Sandee Turner at 3 (May 24, 1999).

[252] *Id.* at 8.

[253] Tr. at 1877 (June 5, 1999).

[254] SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 14 (Feb. 19, 1999).

is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install. Based on these existing obligations, we conclude that, at a minimum, incumbent LECs must provide requesting carriers the same underlying information that the incumbent LEC has in any of its own databases or other internal records. For example, the incumbent LEC must provide to requesting carriers the following: (1) the composition of the loop material, including, but not limited to, fiber optics, copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. Consistent with our nondiscriminatory access obligations, the incumbent LEC must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides such information to itself."[255]

In that same decision, the FCC clarified that "the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel. Denying competitors access to such information, where the incumbent (or an affiliate, if one exists) is able to obtain the relevant information for itself, will impede the efficient deployment of advanced services. To permit an incumbent LEC to preclude requesting carriers from obtaining information about the underlying capabilities of the loop plant in the same manner as the incumbent LEC's personnel would be contrary to the goals of the Act to promote innovation and deployment of new technologies by multiple parties."[256]

18.   Can SWBT impose a loop qualification process rather than provide information concerning loop makeup?

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[255] *UNE Remand Order* at ¶ 427.

[256] *Id.* at ¶ 430.